

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

DAVID LAMONT MORGAN,	)	
	)	
Plaintiff	)	
	)	
vs.	)	No. CIV-06-994-C
	)	
WARDEN ERIC FRANKLIN, et al.,	)	
	)	
Defendants	)	

ORDER

In this action, Plaintiff, a state prisoner appearing pro se, sues various prison personnel for violations of his constitutional rights while incarcerated at the Oklahoma State Reformatory. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Bana Roberts for initial proceedings. Upon initial review of the Complaint, Judge Roberts recommended dismissal without prejudice for failure to demonstrate exhaustion of available administrative remedies. Within the time allotted for the filing of objections, Plaintiff has filed a “Motion to File Tore Action Against the Defendant’s” (Dkt. No. 27) and “Motion Not to Dismissed the Plaintiff Civil Complaint’s” (Dkt. No. 28). The Court construes these documents as objections to the Report and Recommendation of the Magistrate Judge, and therefore considers the matter de novo.

The facts and controlling law are fairly and accurately set out in Judge Robert’s Report and Recommendation and need not be repeated here. In the two pleadings the Court

is construing as objections, Plaintiff merely restates the essential facts upon which he claims relief, and restates his efforts to exhaust administrative remedies. He does not allege or offer any evidence that he pursued the administrative remedy through the administrative review authority, and therefore fails to contradict either the facts or law upon which Judge Roberts' recommendation was based. Failing completion of this step, necessary for complete exhaustion, Plaintiff's claims are not yet ripe for review by a federal court.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge. For the reasons explained therein, this action is dismissed, without prejudice, for failure to exhaust available administrative remedies.

IT IS SO ORDERED this 5th day of January, 2007.

  
ROBIN J. CAUTHRON  
United States District Judge